

State of Wisconsin
2011 - 2012 LEGISLATURE

in
1/26



LRB-07214 3
ARG:wlj:ph

stays — ~~AMR~~

DOA:.....Waterman, BB0145 - Transfer notary and trademark functions
from Secretary of State to DFI

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

LPS:
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auto-ref.

Do Not Gen

1 AN ACT *to amend* 20.575 (1) (g), 100.14 (2), 132.01 (1), 132.01 (3), 132.01 (5),
2 132.01 (6), 132.01 (7) (intro.), 132.01 (7) (b), 132.01 (8), 132.01 (9), 132.031,
3 132.04 (1), 132.04 (2), 132.04 (3), 132.04 (4), 132.11 (1) (intro.), 132.11 (1) (c),
4 132.16 (1m), 132.16 (2), 132.16 (3), 132.16 (5), 132.16 (6), 137.01 (1) (a), 137.01
5 (1) (b), 137.01 (1) (d), 137.01 (1) (e), 137.01 (1) (g), 137.01 (2) (a), 137.01 (2) (am),
6 137.01 (2) (b), 137.01 (2) (c), 137.01 (6) (a), 137.01 (6m) and 137.01 (7); and *to*
7 *create* 132.001 (1m) of the statutes; **relating to:** the budget.

Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT
FINANCIAL INSTITUTIONS

Under current law, a person may file an application to be a notary public with the Office of the Secretary of State (SOS). If the SOS determines that the applicant is qualified, the SOS issues a certificate of appointment and the person's commission as a notary public is valid for four years. However, for a person licensed to practice law, the commission as a notary public is permanent.

This bill transfers notary public functions from the Office of the SOS to DFI.

Under current law, a person may file for state trademark or service mark registration with the Office of the SOS. If applicable requirements are met, the SOS issues a certificate of registration of the mark. The SOS must also keep a record of brands used on beverage containers for which the SOS has received an application to record the brand. A lodge, fraternal society, or similar organization may also register with the SOS its identifying information, including its name, motto, emblem, or other insignia, and the SOS must keep a properly indexed file of these registrations.

This bill transfers these trademark and similar functions from the Office of the SOS to DFI.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.575 (1) (g) of the statutes is amended to read:

2 20.575 (1) (g) *Program fees.* The amounts in the schedule for the purpose of
3 carrying out general program operations. Except as provided under par. (ka), all
4 amounts received by the secretary of state, including fees under ~~ch. 132 and subch.~~
5 ~~I of ch. 137 s. 137.02~~ and all moneys transferred from the appropriation under s.
6 20.144 (1) (g), shall be credited to this appropriation. Notwithstanding s. 20.001 (3)
7 (a), any unencumbered balance at the close of a fiscal year exceeding 10% of that
8 fiscal year's expenditures under this appropriation shall lapse to the general fund.

9 **SECTION 2.** 100.14 (2) of the statutes is amended to read:

10 100.14 (2) The ~~secretary of state~~ department of financial institutions shall,
11 upon application of the department of agriculture, trade and consumer protection,
12 record any such label or trademark under ss. 132.01 to 132.11. The department of
13 agriculture, trade and consumer protection shall be entitled to protect such label or
14 trademark under said sections and in any other manner authorized by law.

15 **SECTION 3.** 132.001 (1m) of the statutes is created to read:

1 132.001 (1m) "Department" means the department of financial institutions.

2 **SECTION 4.** 132.01 (1) of the statutes is amended to read:

3 132.01 (1) Any person, firm, partnership, corporation, association, or union of
4 workingmen, which has heretofore adopted or used or shall hereafter adopt or use
5 any mark for the purpose of designating, making known, or distinguishing any
6 goods, wares, merchandise, service, business, or other product of labor or
7 manufacture as having been made, manufactured, produced, prepared, packed, or
8 put on sale by such person, firm, partnership, corporation, association, or union of
9 workingmen, or by a member or members thereof, he, she, or they, if residents of this
10 or any other state of the United States, and such foreign corporations as may have
11 been duly licensed to transact business in the state of Wisconsin, may file an original,
12 a copy, or photographs, or cuts with specifications of the same for record ~~in the office~~
13 ~~of the secretary of state~~ with the department, by leaving 2 such originals, copies,
14 photographs, or cuts with specifications, the same being counterparts, facsimiles, or
15 drawings thereof, with ~~said secretary~~ the department and by filing therewith a
16 sworn statement, in such form as may be prescribed by the ~~secretary of state~~
17 department, specifying the name of the person, firm, partnership, corporation,
18 association, or union of workingmen, on whose behalf such mark is to be filed, the
19 class of merchandise and a separate description of the goods to which the same has
20 been or is intended to be appropriated, the residence, location, or place of business
21 of such party, that the party, on whose behalf such mark is to be filed, has the right
22 to the use of the same, and that no other person, or persons, firm, partnership,
23 corporation, association, or union of workingmen has such right either in the
24 identical form or in any such near resemblance thereto as may be calculated to

1 deceive, and that the originals, copies, photographs, or cuts, counterparts,
2 facsimiles, or drawings filed therewith are correct.

3 **SECTION 5.** 132.01 (3) of the statutes is amended to read:

4 132.01 (3) For an original or renewal registration, or the recording of an
5 assignment, there shall be paid to the ~~secretary of state~~ department the fee of \$15.

6 **SECTION 6.** 132.01 (5) of the statutes is amended to read:

7 132.01 (5) The ~~secretary of state~~ department may not register any mark which
8 consists of or comprises a replica or simulation of the flag, coat of arms, or insignia
9 of the United States of America, or of any state or municipality or any foreign nation.

10 **SECTION 7.** 132.01 (6) of the statutes is amended to read:

11 132.01 (6) (a) A registration recorded or renewed under this section or s. 132.04
12 or 132.11 before May 1, 1990, is effective for 20 years. A registration may be renewed
13 on or after May 1, 1990, for 10-year periods upon application to the ~~secretary of state~~
14 department and payment of the same fee required for a registration. Application for
15 renewal shall be made within 6 months before the expiration of the 20-year
16 registration period or 10-year renewal period specified in this paragraph.

17 (b) A registration recorded under this section or s. 132.04 or 132.11 on or after
18 May 1, 1990, is effective for 10 years. A registration may be renewed for 10-year
19 periods upon application to the ~~secretary of state~~ department and payment of the
20 same fee required for a registration. Application for renewal shall be made within
21 6 months before the expiration of the 10-year period specified in this paragraph.

22 **SECTION 8.** 132.01 (7) (intro.) of the statutes is amended to read:

23 132.01 (7) (intro.) The ~~secretary of state~~ department shall do all of the
24 following:

25 **SECTION 9.** 132.01 (7) (b) of the statutes is amended to read:

1 132.01 (7) (b) Cancel from his or her register a registration of a mark under this
2 section upon the request of the registrant of the mark. The ~~secretary of state~~
3 department may not charge a fee for canceling a registration under this paragraph.

4 **SECTION 10.** 132.01 (8) of the statutes is amended to read:

5 132.01 (8) Any person, firm, partnership, corporation, association or union who
6 claims a right to the use of subject matter conflicting with any registration by another
7 may bring action against such other in the circuit court for the county in which such
8 other resides, or in the circuit court for Dane County, and in any such action the right
9 to the use and registration of such subject matter shall be determined as between the
10 parties, and registration shall be granted or withheld or canceled by the ~~secretary~~
11 ~~of state~~ department in accordance with the final judgment in any such action.
12 Nonuser for a period of at least 2 years continuing to the date of commencement of
13 any action in which abandonment is in issue shall be prima facie evidence of
14 abandonment to the extent of such nonuser.

15 **SECTION 11.** 132.01 (9) of the statutes is amended to read:

16 132.01 (9) Title to any registration hereunder shall pass to any person, firm or
17 corporation succeeding to the registrant's business to which such registration
18 pertains. Written assignments of any such registration from a registrant to such a
19 successor may be filed with and shall be recorded by the ~~secretary of state~~
20 department upon payment of the fee specified in sub. (3). When such assignment is
21 recorded, a new registration shall be entered in the name of the assignee, and on such
22 registration and any subsequent certificates or registration of an assigned
23 registration the ~~secretary of state~~ department shall show the previous ownership
24 and dates of assignment thereof.

25 **SECTION 12.** 132.031 of the statutes is amended to read:

1 **132.031 Certificate; evidence.** The ~~secretary of state~~ department shall
2 deliver to the person, corporation, association or union so filing or causing to be filed
3 any such mark, or any assignment of such subject matter previously registered, or
4 to any person, corporation, association or union renewing a registration, as many
5 duly attested certificates of the registration or renewal of the same as may be desired.
6 Any such certificate shall, in all suits and prosecutions arising out of or depending
7 upon any rights claimed under such mark, be prima facie evidence of the adoption
8 thereof and of the facts prerequisite to registrations thereof as required by s. 132.01.

9 **SECTION 13.** 132.04 (1) of the statutes is amended to read:

10 **132.04 (1)** Any person who is the owner of cans, tubs, firkins, boxes, bottles,
11 casks, barrels, kegs, cartons, tanks, fountains, vessels or containers with his or her
12 names, brands, designs, trademarks, devices or other marks of ownership stamped,
13 impressed, labeled, blown in or otherwise marked thereon, may file with the
14 ~~secretary of state~~ department and record with the register of deeds of any county in
15 which the person has his or her principal place of business, a written statement or
16 description verified by affidavit of the owner or his or her agent, of the names, brands,
17 designs, trademarks, devices or other marks of ownership used by him or her, and
18 of the articles upon which they are used, or if the principal place of business is outside
19 the state, then a written statement or verified description may be recorded with the
20 register of deeds of any county. The statement shall be published as a class 3 notice,
21 under ch. 985, in the county, and a copy of the publication, proved as provided in s.
22 985.12, shall also be filed with the ~~secretary of state~~ department and recorded with
23 the register of deeds.

24 **SECTION 14.** 132.04 (2) of the statutes is amended to read:

1 132.04 (2) All such written statements or descriptions and all such certificates
2 of publication so filed or recorded shall be subject at all reasonable hours to public
3 inspection. The ~~secretary of state~~ department and the register of deeds shall deliver
4 to all applicants certified copies of all such written statements or descriptions or
5 names, brands, designs, trademarks, devices, or other marks of ownership and of all
6 certificates of publication filed or recorded with them and such certified copies shall
7 be admissible in evidence in all prosecutions under ss. 132.04 to 132.08, and shall be
8 prima facie evidence that this section has been complied with, and of the title of the
9 owner named therein to the property upon which the name, brand, design,
10 trademark, device, or other marks of ownership of the owner appear as described
11 therein.

12 **SECTION 15.** 132.04 (3) of the statutes is amended to read:

13 132.04 (3) The ~~secretary of state~~ department shall receive a fee of \$15 and the
14 register of deeds shall receive the fee specified in s. 59.43 (2) (ag) or (e) for each
15 statement and certificate of publication filed or recorded and shall also receive the
16 fee specified in s. 59.43 (2) (b) for each certified copy of such statement and certificate
17 of publication, to be paid for by the person filing, recording or applying for the same.

18 **SECTION 16.** 132.04 (4) of the statutes is amended to read:

19 132.04 (4) (a) The ~~secretary of state~~ department and register of deeds shall
20 cancel a statement or description under this section upon the request of the person
21 named in the records of the ~~secretary of state~~ department or register of deeds as the
22 owner of marks of ownership described in the statement or description.

23 (b) The ~~secretary of state~~ department and register of deeds may not charge a
24 fee for canceling a statement or description under par. (a).

25 **SECTION 17.** 132.11 (1) (intro.) of the statutes is amended to read:

1 132.11 (1) (intro.) The ~~secretary of state~~ department shall do all of the
2 following:

3 **SECTION 18.** 132.11 (1) (c) of the statutes is amended to read:

4 132.11 (1) (c) Cancel the description of a name, brand or trademark recorded
5 under par. (a) upon the request of the person, firm or corporation named in the
6 records of the ~~secretary of state~~ department as the owner of the name, brand or
7 trademark. The ~~secretary of state~~ department may not charge a fee for canceling a
8 description under this paragraph.

9 **SECTION 19.** 132.16 (1m) of the statutes is amended to read:

10 132.16 (1m) Any organization may register, ~~in the office of the secretary of~~
11 ~~state, with the~~ department a facsimile, duplicate, or description of any of the
12 organization's identifying information and may, by reregistration, alter or cancel the
13 organization's identifying information.

14 **SECTION 20.** 132.16 (2) of the statutes is amended to read:

15 132.16 (2) Application for registration or reregistration under sub. (1m) shall
16 be made by the organization's chief officer or officers upon forms provided by the
17 ~~secretary of state~~ department. The registration shall be for the use, benefit, and on
18 behalf of the organization and the organization's current and future individual
19 members throughout this state.

20 **SECTION 21.** 132.16 (3) of the statutes is amended to read:

21 132.16 (3) The ~~secretary of state~~ department shall keep a properly indexed file
22 of all registrations under this section, which shall also show any alterations or
23 cancelations by reregistration.

24 **SECTION 22.** 132.16 (5) of the statutes is amended to read:

1 132.16 (5) Upon granting registration under this section, the ~~secretary of state~~
2 department shall issue ~~his or her~~ a certificate to the petitioners, setting forth the fact
3 of the registration.

4 **SECTION 23.** 132.16 (6) of the statutes is amended to read:

5 132.16 (6) The fees of the ~~secretary of state~~ department for registration or
6 reregistration under this section, searches made by the ~~secretary of state~~
7 department, and certificates issued by the ~~secretary of state~~ department under this
8 section, shall be the same as provided by law for similar services. The fees collected
9 under this section shall be paid by the ~~secretary of state~~ department into the state
10 treasury.

11 **SECTION 24.** 137.01 (1) (a) of the statutes is amended to read:

12 137.01 (1) (a) The governor shall appoint notaries public who shall be United
13 States residents and at least 18 years of age. Applicants who are not attorneys shall
14 file an application with the ~~secretary of state~~ department of financial institutions
15 and pay a \$20 fee.

16 **SECTION 25.** 137.01 (1) (b) of the statutes is amended to read:

17 137.01 (1) (b) The secretary of state financial institutions shall satisfy himself
18 or herself that the applicant has the equivalent of an 8th grade education, is familiar
19 with the duties and responsibilities of a notary public and, subject to ss. 111.321,
20 111.322 and 111.335, does not have an arrest or conviction record.

21 **SECTION 26.** 137.01 (1) (d) of the statutes is amended to read:

22 137.01 (1) (d) Qualified applicants shall be notified by the ~~secretary of state~~
23 department of financial institutions to take and file the official oath and execute and
24 file an official bond in the sum of \$500, with a surety executed by a surety company
25 and approved by the secretary of state financial institutions.

1 **SECTION 27.** 137.01 (1) (e) of the statutes is amended to read:

2 137.01 (1) (e) The qualified applicant shall file his or her signature, post-office
3 address and an impression of his or her official seal, or imprint of his or her official
4 rubber stamp with the ~~secretary of state~~ department of financial institutions.

5 **SECTION 28.** 137.01 (1) (g) of the statutes is amended to read:

6 137.01 (1) (g) At least 30 days before the expiration of a commission the
7 ~~secretary of state~~ department of financial institutions shall mail notice of the
8 expiration date to the holder of a commission.

9 **SECTION 29.** 137.01 (2) (a) of the statutes is amended to read:

10 137.01 (2) (a) Except as provided in par. (am), any United States resident who
11 is licensed to practice law in this state is entitled to a permanent commission as a
12 notary public upon application to the ~~secretary of state~~ department of financial
13 institutions and payment of a \$50 fee. The application shall include a certificate of
14 good standing from the supreme court, the signature and post-office address of the
15 applicant and an impression of the applicant's official seal, or imprint of the
16 applicant's official rubber stamp.

17 **SECTION 30.** 137.01 (2) (am) of the statutes is amended to read:

18 137.01 (2) (am) If a United States resident has his or her license to practice law
19 in this state suspended or revoked, upon reinstatement of his or her license to
20 practice law in this state, the person may be entitled to receive a certificate of
21 appointment as a notary public for a term of 4 years. An eligible notary appointed
22 under this paragraph is entitled to reappointment for 4-year increments. At least
23 30 days before the expiration of a commission under this paragraph the ~~secretary of~~
24 ~~state~~ department of financial institutions shall mail notice of the expiration date to
25 the holder of the commission.

1 **SECTION 31.** 137.01 (2) (b) of the statutes is amended to read:

2 137.01 (2) (b) The secretary of state financial institutions shall issue a
3 certificate of appointment as a notary public to persons who qualify under the
4 requirements of this subsection. The certificate shall state that the notary
5 commission is permanent or is for 4 years.

6 **SECTION 32.** 137.01 (2) (c) of the statutes is amended to read:

7 137.01 (2) (c) The supreme court shall file with the ~~secretary of state~~
8 department of financial institutions notice of the surrender, suspension or revocation
9 of the license to practice law of any attorney who holds a permanent commission as
10 a notary public. Such notice shall be deemed a revocation of said commission.

11 **SECTION 33.** 137.01 (6) (a) of the statutes is amended to read:

12 137.01 (6) (a) The secretary of state financial institutions may certify to the
13 official qualifications of any notary public and to the genuineness of the notary
14 public's signature and seal or rubber stamp.

15 **SECTION 34.** 137.01 (6m) of the statutes is amended to read:

16 137.01 (6m) CHANGE OF RESIDENCE. A notary public does not vacate his or her
17 office by reason of his or her change of residence within the United States. Written
18 notice of any change of address shall be given to the ~~secretary of state~~ department
19 of financial institutions within 10 days of the change.

20 **SECTION 35.** 137.01 (7) of the statutes is amended to read:

21 137.01 (7) OFFICIAL RECORDS TO BE FILED. When any notary public ceases to hold
22 office, the notary public, or in case of the notary public's death the notary public's
23 personal representative, shall deposit the notary public's official records and papers
24 ~~in the office of the secretary of state~~ with the department of financial institutions.
25 If the notary or personal representative, after the records and papers come to his or

1 her hands, neglects for 3 months to deposit them, he or she shall forfeit not less than
2 \$50 nor more than \$500. If any person knowingly destroys, defaces, or conceals any
3 records or papers of any notary public, the person shall forfeit not less than \$50 nor
4 more than \$500, and shall be liable for all damages resulting to the party injured.
5 The ~~secretary of state~~ department of financial institutions shall receive and safely
6 keep all such papers and records.

7 **SECTION 9142. Nonstatutory provisions; Secretary of State.**

8 (1) TRANSFER OF TRADEMARK AND NOTARY FUNCTIONS TO THE DEPARTMENT OF
9 FINANCIAL INSTITUTIONS; TRANSITIONAL PROVISIONS.

10 (a) *Definitions.* In this subsection:

11 1. "Department" means the department of financial institutions.

12 2. "Office" means the office of the secretary of state.

13 3. "Relating to the office's trademark or notary functions" means relating to the
14 office's functions and duties under section 137.01, 2009 stats., or chapter 132, 2009
15 stats.

16 (b) *Assets and liabilities.* On the effective date of this paragraph, the assets and
17 liabilities of the office relating to the office's trademark or notary functions shall
18 become the assets and liabilities of the department.

19 ^d *Tangible personal property.* On the effective date of this paragraph, all
20 tangible personal property, including records, of the office relating to the office's
21 trademark or notary functions is transferred to the department.

22 ^e *Contracts.* All contracts entered into by the office, in effect on the effective
23 date of this paragraph, relating to the office's trademark or notary functions remain
24 in effect and are transferred to the department. The department shall carry out any

obligations under such a contract until the contract is modified or rescinded by the department to the extent allowed under the contract.

^f
(3) *Rules and orders.*

1. All rules promulgated by the office relating to the office's trademark or notary functions that are in effect on the effective date of this subdivision remain in effect until their specified expiration dates or until amended or repealed by the department.

2. All orders issued by the office relating to the office's trademark or notary functions that are in effect on the effective date of this subdivision remain in effect until their specified expiration dates or until modified or rescinded by the department.

^g
(12) *Pending matters.* Any matter relating to the office's trademark or notary functions pending with the office on the effective date of this paragraph is transferred to the department, and all materials submitted to or actions taken by the office with respect to the pending matter are considered as having been submitted to or taken by the department.

^h
(17) *Department of administration to arbitrate disputes.* In the case of disagreement between the secretary of financial institutions and the secretary of state with respect to any matter specified in paragraph (c), (d), (e), ^g or (f), ^{or (g)} the department of administration shall determine the matter and shall develop a plan for an orderly transfer.

SECTION 9442. Effective dates; Secretary of State.

(1) TRANSFER OF TRADEMARK AND NOTARY FUNCTIONS TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS. The treatment of sections 20.575 (1) (g), 100.14 (2), 132.001 (1m), 132.01 (1), (3), (5), (6), (7) (intro.) and (b), (8), and (9), 132.031, 132.04 (1), (2),

1 (3), and (4), 132.11 (1) (intro.) and (c), 132.16 (1m), (2), (3), (5), and (6), 137.01 (1) (a),
2 (b), (d), (e), and (g), (2) (a), (am), (b), and (c), (6) (a), (6m), and (7) of the statutes and
3 SECTION 9142 (1) of this act take effect on October 1, 2011, or on the day after
4 publication, whichever is later.

5 (END)

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0721/3ins
ARG:.....

INSERT 12-18:

(c) *Staff.*

Create
A.R. X

1 . On the effective date of this subdivision, 1.0 FTE PR position relating to the office's trademark or notary functions and the incumbent employee, identified by the secretary of financial institutions, holding that position in the office are transferred to the department.

Use A.R. X

2 . The employee transferred under subdivision 1 . to the division has all of the rights and the same status under subchapter V of chapter 111 and chapter 230 of the statutes in the division that he or she enjoyed in the office immediately before the transfer. Notwithstanding section 230.28 (4) of the statutes, the employee so transferred who has attained permanent status in class is not required to serve a probationary period.

3 . On the effective date of this subdivision, the remaining 1.0 FTE PR position of the office relating to the office's trademark or notary functions not transferred under subdivision 1 . is deauthorized.

Use
A.R. X

Gary, Aaron

From: Waterman, Mickie D - DOA [Mickie.Waterman@wisconsin.gov]
Sent: Wednesday, January 26, 2011 1:21 PM
To: Gary, Aaron
Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Hi Aaron,

Yes, both are PR funded positions.

Mickie

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Wednesday, January 26, 2011 11:10 AM
To: Waterman, Mickie D - DOA
Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Hi Mickie,

Are these PR funded positions? Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Waterman, Mickie D - DOA [mailto:Mickie.Waterman@wisconsin.gov]
Sent: Tuesday, January 25, 2011 1:52 PM
To: Gary, Aaron
Subject: FW: Transfer notary and trademark functions from Secretary of State to DFI

Hi Aaron

There are currently 2.0 FTE for these two functions. Please add to this draft non-stat language for the transfer of 1.0 FTE incumbent employee (employee transfers & employee status). There will be an elimination of the other 1.0 FTE.

Thanks,
Mickie

From: DOADLBASADMININTERNETSHAREPOINT@WI.GOV
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]
Sent: Monday, January 03, 2011 3:02 PM
To: Waterman, Mickie D - DOA
Cc: Thornton, Scott - DOA; Grinde, Kirsten - DOA
Subject: Transfer notary and trademark functions from Secretary of State to DFI

We have received an LRB draft for DOA Tracking Code: BB0145

1/26/2011

LRB Draft Number: 0721/2

Drafting Attorney: Aaron R. Gary

Phone: (608) 261-6926

E-mail: aaron.gary@legis.wisconsin.gov

The document can be found in the Stat Language site on SharePoint.

Gary, Aaron

From: Waterman, Mickie D - DOA [Mickie.Waterman@wisconsin.gov]
Sent: Thursday, January 27, 2011 10:08 AM
To: Gary, Aaron
Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Hi Aaron,

Thank you. This looks good except for one small thing. On page 12, line 18, will you please change "financial institutions" to "administration?" We would like the DOA to have the authority to identify the incumbent that will be transferring to DFI.

Thanks,
Mickie

From: DOADLBASADMININTERNETSHAREPOINT@WI.GOV
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]
Sent: Thursday, January 27, 2011 9:43 AM
To: Waterman, Mickie D - DOA
Cc: Thornton, Scott - DOA; Grinde, Kirsten - DOA
Subject: Transfer notary and trademark functions from Secretary of State to DFI

We have received an LRB draft for DOA Tracking Code: BB0145

LRB Draft Number: 0721/3

Drafting Attorney: Aaron R. Gary
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

The document can be found in the Stat Language site on SharePoint.

1/27/2011



State of Wisconsin
2011 - 2012 LEGISLATURE

in
1/27



LRB-0721/4
ARG:wlj:ph

(stays) — RMR

DOA:.....Waterman, BB0145 - Transfer notary and trademark functions
from Secretary of State to DFI

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

One change - p. 12

DoNotGen

1 AN ACT ..., relating to: the budget.

Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT
FINANCIAL INSTITUTIONS

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For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.575 (1) (g) of the statutes is amended to read:

2 20.575 (1) (g) *Program fees.* The amounts in the schedule for the purpose of
3 carrying out general program operations. Except as provided under par. (ka), all
4 amounts received by the secretary of state, including fees under ~~ch. 132 and subch.~~
5 ~~I of ch. 137 s. 137.02~~ and all moneys transferred from the appropriation under s.
6 20.144 (1) (g), shall be credited to this appropriation. Notwithstanding s. 20.001 (3)
7 (a), any unencumbered balance at the close of a fiscal year exceeding 10% of that
8 fiscal year's expenditures under this appropriation shall lapse to the general fund.

9 **SECTION 2.** 100.14 (2) of the statutes is amended to read:

10 100.14 (2) The ~~secretary of state~~ department of financial institutions shall,
11 upon application of the department of agriculture, trade and consumer protection,
12 record any such label or trademark under ss. 132.01 to 132.11. The department of
13 agriculture, trade and consumer protection shall be entitled to protect such label or
14 trademark under said sections and in any other manner authorized by law.

15 **SECTION 3.** 132.001 (1m) of the statutes is created to read:

16 132.001 (1m) "Department" means the department of financial institutions.

17 **SECTION 4.** 132.01 (1) of the statutes is amended to read:

18 132.01 (1) Any person, firm, partnership, corporation, association, or union of
19 workingmen, which has heretofore adopted or used or shall hereafter adopt or use
20 any mark for the purpose of designating, making known, or distinguishing any
21 goods, wares, merchandise, service, business, or other product of labor or

1 manufacture as having been made, manufactured, produced, prepared, packed, or
2 put on sale by such person, firm, partnership, corporation, association, or union of
3 workingmen, or by a member or members thereof, he, she, or they, if residents of this
4 or any other state of the United States, and such foreign corporations as may have
5 been duly licensed to transact business in the state of Wisconsin, may file an original,
6 a copy, or photographs, or cuts with specifications of the same for record ~~in the office~~
7 ~~of the secretary of state~~ with the department, by leaving 2 such originals, copies,
8 photographs, or cuts with specifications, the same being counterparts, facsimiles, or
9 drawings thereof, with ~~said secretary~~ the department and by filing therewith a
10 sworn statement, in such form as may be prescribed by the ~~secretary of state~~
11 department, specifying the name of the person, firm, partnership, corporation,
12 association, or union of workingmen, on whose behalf such mark is to be filed, the
13 class of merchandise and a separate description of the goods to which the same has
14 been or is intended to be appropriated, the residence, location, or place of business
15 of such party, that the party, on whose behalf such mark is to be filed, has the right
16 to the use of the same, and that no other person, or persons, firm, partnership,
17 corporation, association, or union of workingmen has such right either in the
18 identical form or in any such near resemblance thereto as may be calculated to
19 deceive, and that the originals, copies, photographs, or cuts, counterparts,
20 facsimiles, or drawings filed therewith are correct.

21 **SECTION 5.** 132.01 (3) of the statutes is amended to read:

22 132.01 (3) For an original or renewal registration, or the recording of an
23 assignment, there shall be paid to the ~~secretary of state~~ department the fee of \$15.

24 **SECTION 6.** 132.01 (5) of the statutes is amended to read:

1 132.01 (5) The ~~secretary of state~~ department may not register any mark which
2 consists of or comprises a replica or simulation of the flag, coat of arms, or insignia
3 of the United States of America, or of any state or municipality or any foreign nation.

4 **SECTION 7.** 132.01 (6) of the statutes is amended to read:

5 132.01 (6) (a) A registration recorded or renewed under this section or s. 132.04
6 or 132.11 before May 1, 1990, is effective for 20 years. A registration may be renewed
7 on or after May 1, 1990, for 10-year periods upon application to the ~~secretary of state~~
8 department and payment of the same fee required for a registration. Application for
9 renewal shall be made within 6 months before the expiration of the 20-year
10 registration period or 10-year renewal period specified in this paragraph.

11 (b) A registration recorded under this section or s. 132.04 or 132.11 on or after
12 May 1, 1990, is effective for 10 years. A registration may be renewed for 10-year
13 periods upon application to the ~~secretary of state~~ department and payment of the
14 same fee required for a registration. Application for renewal shall be made within
15 6 months before the expiration of the 10-year period specified in this paragraph.

16 **SECTION 8.** 132.01 (7) (intro.) of the statutes is amended to read:

17 132.01 (7) (intro.) The ~~secretary of state~~ department shall do all of the
18 following:

19 **SECTION 9.** 132.01 (7) (b) of the statutes is amended to read:

20 132.01 (7) (b) Cancel from his or her register a registration of a mark under this
21 section upon the request of the registrant of the mark. The ~~secretary of state~~
22 department may not charge a fee for canceling a registration under this paragraph.

23 **SECTION 10.** 132.01 (8) of the statutes is amended to read:

24 132.01 (8) Any person, firm, partnership, corporation, association or union who
25 claims a right to the use of subject matter conflicting with any registration by another

1 may bring action against such other in the circuit court for the county in which such
2 other resides, or in the circuit court for Dane County, and in any such action the right
3 to the use and registration of such subject matter shall be determined as between the
4 parties, and registration shall be granted or withheld or canceled by the ~~secretary~~
5 ~~of state~~ department in accordance with the final judgment in any such action.
6 Nonuser for a period of at least 2 years continuing to the date of commencement of
7 any action in which abandonment is in issue shall be prima facie evidence of
8 abandonment to the extent of such nonuser.

9 **SECTION 11.** 132.01 (9) of the statutes is amended to read:

10 132.01 (9) Title to any registration hereunder shall pass to any person, firm or
11 corporation succeeding to the registrant's business to which such registration
12 pertains. Written assignments of any such registration from a registrant to such a
13 successor may be filed with and shall be recorded by the ~~secretary of state~~
14 department upon payment of the fee specified in sub. (3). When such assignment is
15 recorded, a new registration shall be entered in the name of the assignee, and on such
16 registration and any subsequent certificates or registration of an assigned
17 registration the ~~secretary of state~~ department shall show the previous ownership
18 and dates of assignment thereof.

19 **SECTION 12.** 132.031 of the statutes is amended to read:

20 **132.031 Certificate; evidence.** The ~~secretary of state~~ department shall
21 deliver to the person, corporation, association or union so filing or causing to be filed
22 any such mark, or any assignment of such subject matter previously registered, or
23 to any person, corporation, association or union renewing a registration, as many
24 duly attested certificates of the registration or renewal of the same as may be desired.
25 Any such certificate shall, in all suits and prosecutions arising out of or depending

1 upon any rights claimed under such mark, be prima facie evidence of the adoption
2 thereof and of the facts prerequisite to registrations thereof as required by s. 132.01.

3 **SECTION 13.** 132.04 (1) of the statutes is amended to read:

4 132.04 (1) Any person who is the owner of cans, tubs, firkins, boxes, bottles,
5 casks, barrels, kegs, cartons, tanks, fountains, vessels or containers with his or her
6 names, brands, designs, trademarks, devices or other marks of ownership stamped,
7 impressed, labeled, blown in or otherwise marked thereon, may file with the
8 ~~secretary of state~~ department and record with the register of deeds of any county in
9 which the person has his or her principal place of business, a written statement or
10 description verified by affidavit of the owner or his or her agent, of the names, brands,
11 designs, trademarks, devices or other marks of ownership used by him or her, and
12 of the articles upon which they are used, or if the principal place of business is outside
13 the state, then a written statement or verified description may be recorded with the
14 register of deeds of any county. The statement shall be published as a class 3 notice,
15 under ch. 985, in the county, and a copy of the publication, proved as provided in s.
16 985.12, shall also be filed with the ~~secretary of state~~ department and recorded with
17 the register of deeds.

18 **SECTION 14.** 132.04 (2) of the statutes is amended to read:

19 132.04 (2) All such written statements or descriptions and all such certificates
20 of publication so filed or recorded shall be subject at all reasonable hours to public
21 inspection. The ~~secretary of state~~ department and the register of deeds shall deliver
22 to all applicants certified copies of all such written statements or descriptions or
23 names, brands, designs, trademarks, devices, or other marks of ownership and of all
24 certificates of publication filed or recorded with them and such certified copies shall
25 be admissible in evidence in all prosecutions under ss. 132.04 to 132.08, and shall be

1 prima facie evidence that this section has been complied with, and of the title of the
2 owner named therein to the property upon which the name, brand, design,
3 trademark, device, or other marks of ownership of the owner appear as described
4 therein.

5 **SECTION 15.** 132.04 (3) of the statutes is amended to read:

6 132.04 (3) The ~~secretary of state~~ department shall receive a fee of \$15 and the
7 register of deeds shall receive the fee specified in s. 59.43 (2) (ag) or (e) for each
8 statement and certificate of publication filed or recorded and shall also receive the
9 fee specified in s. 59.43 (2) (b) for each certified copy of such statement and certificate
10 of publication, to be paid for by the person filing, recording or applying for the same.

11 **SECTION 16.** 132.04 (4) of the statutes is amended to read:

12 132.04 (4) (a) The ~~secretary of state~~ department and register of deeds shall
13 cancel a statement or description under this section upon the request of the person
14 named in the records of the ~~secretary of state~~ department or register of deeds as the
15 owner of marks of ownership described in the statement or description.

16 (b) The ~~secretary of state~~ department and register of deeds may not charge a
17 fee for canceling a statement or description under par. (a).

18 **SECTION 17.** 132.11 (1) (intro.) of the statutes is amended to read:

19 132.11 (1) (intro.) The ~~secretary of state~~ department shall do all of the
20 following:

21 **SECTION 18.** 132.11 (1) (c) of the statutes is amended to read:

22 132.11 (1) (c) Cancel the description of a name, brand or trademark recorded
23 under par. (a) upon the request of the person, firm or corporation named in the
24 records of the ~~secretary of state~~ department as the owner of the name, brand or

1 trademark. The ~~secretary of state~~ department may not charge a fee for canceling a
2 description under this paragraph.

3 **SECTION 19.** 132.16 (1m) of the statutes is amended to read:

4 132.16 (1m) Any organization may register, ~~in the office of the secretary of~~
5 ~~state, with the~~ department a facsimile, duplicate, or description of any of the
6 organization's identifying information and may, by reregistration, alter or cancel the
7 organization's identifying information.

8 **SECTION 20.** 132.16 (2) of the statutes is amended to read:

9 132.16 (2) Application for registration or reregistration under sub. (1m) shall
10 be made by the organization's chief officer or officers upon forms provided by the
11 ~~secretary of state~~ department. The registration shall be for the use, benefit, and on
12 behalf of the organization and the organization's current and future individual
13 members throughout this state.

14 **SECTION 21.** 132.16 (3) of the statutes is amended to read:

15 132.16 (3) The ~~secretary of state~~ department shall keep a properly indexed file
16 of all registrations under this section, which shall also show any alterations or
17 cancelations by reregistration.

18 **SECTION 22.** 132.16 (5) of the statutes is amended to read:

19 132.16 (5) Upon granting registration under this section, the ~~secretary of state~~
20 department shall issue ~~his or her~~ a certificate to the petitioners, setting forth the fact
21 of the registration.

22 **SECTION 23.** 132.16 (6) of the statutes is amended to read:

23 132.16 (6) The fees of the ~~secretary of state~~ department for registration or
24 reregistration under this section, searches made by the ~~secretary of state~~
25 department, and certificates issued by the ~~secretary of state~~ department under this

1 section, shall be the same as provided by law for similar services. The fees collected
2 under this section shall be paid by the ~~secretary of state~~ department into the state
3 treasury.

4 **SECTION 24.** 137.01 (1) (a) of the statutes is amended to read:

5 137.01 (1) (a) The governor shall appoint notaries public who shall be United
6 States residents and at least 18 years of age. Applicants who are not attorneys shall
7 file an application with the ~~secretary of state~~ department of financial institutions
8 and pay a \$20 fee.

9 **SECTION 25.** 137.01 (1) (b) of the statutes is amended to read:

10 137.01 (1) (b) The secretary of ~~state~~ financial institutions shall satisfy himself
11 or herself that the applicant has the equivalent of an 8th grade education, is familiar
12 with the duties and responsibilities of a notary public and, subject to ss. 111.321,
13 111.322 and 111.335, does not have an arrest or conviction record.

14 **SECTION 26.** 137.01 (1) (d) of the statutes is amended to read:

15 137.01 (1) (d) Qualified applicants shall be notified by the ~~secretary of state~~
16 department of financial institutions to take and file the official oath and execute and
17 file an official bond in the sum of \$500, with a surety executed by a surety company
18 and approved by the secretary of ~~state~~ financial institutions.

19 **SECTION 27.** 137.01 (1) (e) of the statutes is amended to read:

20 137.01 (1) (e) The qualified applicant shall file his or her signature, post-office
21 address and an impression of his or her official seal, or imprint of his or her official
22 rubber stamp with the ~~secretary of state~~ department of financial institutions.

23 **SECTION 28.** 137.01 (1) (g) of the statutes is amended to read:

1 137.01 (1) (g) At least 30 days before the expiration of a commission the
2 ~~secretary of state~~ department of financial institutions shall mail notice of the
3 expiration date to the holder of a commission.

4 **SECTION 29.** 137.01 (2) (a) of the statutes is amended to read:

5 137.01 (2) (a) Except as provided in par. (am), any United States resident who
6 is licensed to practice law in this state is entitled to a permanent commission as a
7 notary public upon application to the ~~secretary of state~~ department of financial
8 institutions and payment of a \$50 fee. The application shall include a certificate of
9 good standing from the supreme court, the signature and post-office address of the
10 applicant and an impression of the applicant's official seal, or imprint of the
11 applicant's official rubber stamp.

12 **SECTION 30.** 137.01 (2) (am) of the statutes is amended to read:

13 137.01 (2) (am) If a United States resident has his or her license to practice law
14 in this state suspended or revoked, upon reinstatement of his or her license to
15 practice law in this state, the person may be entitled to receive a certificate of
16 appointment as a notary public for a term of 4 years. An eligible notary appointed
17 under this paragraph is entitled to reappointment for 4-year increments. At least
18 30 days before the expiration of a commission under this paragraph the ~~secretary of~~
19 ~~state~~ department of financial institutions shall mail notice of the expiration date to
20 the holder of the commission.

21 **SECTION 31.** 137.01 (2) (b) of the statutes is amended to read:

22 137.01 (2) (b) The ~~secretary of state~~ financial institutions shall issue a
23 certificate of appointment as a notary public to persons who qualify under the
24 requirements of this subsection. The certificate shall state that the notary
25 commission is permanent or is for 4 years.

1 **SECTION 32.** 137.01 (2) (c) of the statutes is amended to read:

2 137.01 **(2)** (c) The supreme court shall file with the ~~secretary of state~~
3 department of financial institutions notice of the surrender, suspension or revocation
4 of the license to practice law of any attorney who holds a permanent commission as
5 a notary public. Such notice shall be deemed a revocation of said commission.

6 **SECTION 33.** 137.01 (6) (a) of the statutes is amended to read:

7 137.01 **(6)** (a) The secretary of state financial institutions may certify to the
8 official qualifications of any notary public and to the genuineness of the notary
9 public's signature and seal or rubber stamp.

10 **SECTION 34.** 137.01 (6m) of the statutes is amended to read:

11 137.01 **(6m)** CHANGE OF RESIDENCE. A notary public does not vacate his or her
12 office by reason of his or her change of residence within the United States. Written
13 notice of any change of address shall be given to the ~~secretary of state~~ department
14 of financial institutions within 10 days of the change.

15 **SECTION 35.** 137.01 (7) of the statutes is amended to read:

16 137.01 **(7)** OFFICIAL RECORDS TO BE FILED. When any notary public ceases to hold
17 office, the notary public, or in case of the notary public's death the notary public's
18 personal representative, shall deposit the notary public's official records and papers
19 ~~in the office of the secretary of state~~ with the department of financial institutions.
20 If the notary or personal representative, after the records and papers come to his or
21 her hands, neglects for 3 months to deposit them, he or she shall forfeit not less than
22 \$50 nor more than \$500. If any person knowingly destroys, defaces, or conceals any
23 records or papers of any notary public, the person shall forfeit not less than \$50 nor
24 more than \$500, and shall be liable for all damages resulting to the party injured.

1 The ~~secretary of state~~ department of financial institutions shall receive and safely
2 keep all such papers and records.

3 **SECTION 9142. Nonstatutory provisions; Secretary of State.**

4 (1) TRANSFER OF TRADEMARK AND NOTARY FUNCTIONS TO THE DEPARTMENT OF
5 FINANCIAL INSTITUTIONS; TRANSITIONAL PROVISIONS.

6 (a) *Definitions.* In this subsection:

7 1. "Department" means the department of financial institutions.

8 2. "Office" means the office of the secretary of state.

9 3. "Relating to the office's trademark or notary functions" means relating to the
10 office's functions and duties under section 137.01, 2009 stats., or chapter 132, 2009
11 stats.

12 (b) *Assets and liabilities.* On the effective date of this paragraph, the assets and
13 liabilities of the office relating to the office's trademark or notary functions shall
14 become the assets and liabilities of the department.

15 (c) *Staff.*

16 1. On the effective date of this subdivision, 1.0 FTE PR position relating to the
17 office's trademark or notary functions and the incumbent employee, identified by the
18 secretary of ~~financial institutions~~ ^{administration}, holding that position in the office are transferred
19 to the department.

20 2. The employee transferred under subdivision 1. to the division has all of the
21 rights and the same status under subchapter V of chapter 111 and chapter 230 of the
22 statutes in the division that he or she enjoyed in the office immediately before the
23 transfer. Notwithstanding section 230.28 (4) of the statutes, the employee so
24 transferred who has attained permanent status in class is not required to serve a
25 probationary period.

1 3. On the effective date of this subdivision, the remaining 1.0 FTE PR position
2 of the office relating to the office's trademark or notary functions not transferred
3 under subdivision 1. is deauthorized.

4 (d) *Tangible personal property.* On the effective date of this paragraph, all
5 tangible personal property, including records, of the office relating to the office's
6 trademark or notary functions is transferred to the department.

7 (e) *Contracts.* All contracts entered into by the office, in effect on the effective
8 date of this paragraph, relating to the office's trademark or notary functions remain
9 in effect and are transferred to the department. The department shall carry out any
10 obligations under such a contract until the contract is modified or rescinded by the
11 department to the extent allowed under the contract.

12 (f) *Rules and orders.*

13 1. All rules promulgated by the office relating to the office's trademark or
14 notary functions that are in effect on the effective date of this subdivision remain in
15 effect until their specified expiration dates or until amended or repealed by the
16 department.

17 2. All orders issued by the office relating to the office's trademark or notary
18 functions that are in effect on the effective date of this subdivision remain in effect
19 until their specified expiration dates or until modified or rescinded by the
20 department.

21 (g) *Pending matters.* Any matter relating to the office's trademark or notary
22 functions pending with the office on the effective date of this paragraph is
23 transferred to the department, and all materials submitted to or actions taken by the
24 office with respect to the pending matter are considered as having been submitted
25 to or taken by the department.

SECTION 9142

(h) *Department of administration to arbitrate disputes.* In the case of disagreement between the secretary of financial institutions and the secretary of state with respect to any matter specified in paragraph (c), (d), (e), (f), or (g), the department of administration shall determine the matter and shall develop a plan for an orderly transfer.

SECTION 9442. Effective dates; Secretary of State.

(1) TRANSFER OF TRADEMARK AND NOTARY FUNCTIONS TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS. The treatment of sections 20.575 (1) (g), 100.14 (2), 132.001 (1m), 132.01 (1), (3), (5), (6), (7) (intro.) and (b), (8), and (9), 132.031, 132.04 (1), (2), (3), and (4), 132.11 (1) (intro.) and (c), 132.16 (1m), (2), (3), (5), and (6), 137.01 (1) (a), (b), (d), (e), and (g), (2) (a), (am), (b), and (c), (6) (a), (6m), and (7) of the statutes and SECTION 9142 (1) of this act take effect on October 1, 2011, or on the day after publication, whichever is later.

(END)

Gary, Aaron

From: Waterman, Mickie D - DOA [Mickie.Waterman@wisconsin.gov]
Sent: Wednesday, February 09, 2011 1:19 PM
To: Gary, Aaron
Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Hi Aaron,

Yes. Thanks for checking!

Mickie

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Wednesday, February 09, 2011 1:12 PM
To: Waterman, Mickie D - DOA
Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Mickie,

Do you want this change to take effect with the new fiscal biennium (7/1/11), instead of the delayed eff. date of the rest of this draft? Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Waterman, Mickie D - DOA [mailto:Mickie.Waterman@wisconsin.gov]
Sent: Wednesday, February 09, 2011 11:22 AM
To: Gary, Aaron
Subject: FW: Transfer notary and trademark functions from Secretary of State to DFI

Hi Aaron,

Please add to this draft that we will be increasing the transfer from DFI to SOS from \$200,000 to \$325,000 each year.

Thanks,
Mickie

From: DOADLBASADMININTERNETSHAREPOINT@WI.GOV
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]
Sent: Monday, January 31, 2011 9:11 AM
To: Waterman, Mickie D - DOA
Cc: Thornton, Scott - DOA; Grinde, Kirsten - DOA
Subject: Transfer notary and trademark functions from Secretary of State to DFI

We have received an LRB draft for DOA Tracking Code: BB0145

2/9/2011

LRB Draft Number: 0721/4

Drafting Attorney: Aaron R. Gary

Phone: (608) 261-6926

E-mail: aaron.gary@legis.wisconsin.gov

The document can be found in the Stat Language site on SharePoint.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0721/45
ARG:wlj:jf

in
2/9

Stays → RMA

DOA:.....Waterman, BB0145 - Transfer notary and trademark functions from Secretary of State to DFI

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen

1

AN ACT relating to: the budget.


Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT
FINANCIAL INSTITUTIONS


Under current law, a person may file an application to be a notary public with the Office of the Secretary of State (SOS). If the SOS determines that the applicant is qualified, the SOS issues a certificate of appointment and the person's commission as a notary public is valid for four years. However, for a person licensed to practice law, the commission as a notary public is permanent.

This bill transfers notary public functions from the Office of the SOS to DFI.

Under current law, a person may file for state trademark or service mark registration with the Office of the SOS. If applicable requirements are met, the SOS issues a certificate of registration of the mark. The SOS must also keep a record of brands used on beverage containers for which the SOS has received an application to record the brand. A lodge, fraternal society, or similar organization may also register with the SOS its identifying information, including its name, motto, emblem, or other insignia, and the SOS must keep a properly indexed file of these registrations.

This bill transfers these trademark and similar functions from the Office of the SOS to DFI.

 For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

 ***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1 **SECTION 1.** 20.575 (1) (g) of the statutes is amended to read:

2 20.575 (1) (g) *Program fees.* The amounts in the schedule for the purpose of
3 carrying out general program operations. Except as provided under par. (ka), all
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5 ~~I of ch. 137 s. 137.02~~ and all moneys transferred from the appropriation under s.
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16 132.001 (1m) "Department" means the department of financial institutions.

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20 any mark for the purpose of designating, making known, or distinguishing any
21 goods, wares, merchandise, service, business, or other product of labor or

1 manufacture as having been made, manufactured, produced, prepared, packed, or
2 put on sale by such person, firm, partnership, corporation, association, or union of
3 workingmen, or by a member or members thereof, he, she, or they, if residents of this
4 or any other state of the United States, and such foreign corporations as may have
5 been duly licensed to transact business in the state of Wisconsin, may file an original,
6 a copy, or photographs, or cuts with specifications of the same for record ~~in the office~~
7 ~~of the secretary of state~~ with the department, by leaving 2 such originals, copies,
8 photographs, or cuts with specifications, the same being counterparts, facsimiles, or
9 drawings thereof, with ~~said secretary~~ the department and by filing therewith a
10 sworn statement, in such form as may be prescribed by the ~~secretary of state~~
11 department, specifying the name of the person, firm, partnership, corporation,
12 association, or union of workingmen, on whose behalf such mark is to be filed, the
13 class of merchandise and a separate description of the goods to which the same has
14 been or is intended to be appropriated, the residence, location, or place of business
15 of such party, that the party, on whose behalf such mark is to be filed, has the right
16 to the use of the same, and that no other person, or persons, firm, partnership,
17 corporation, association, or union of workingmen has such right either in the
18 identical form or in any such near resemblance thereto as may be calculated to
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3 of the United States of America, or of any state or municipality or any foreign nation.

4 **SECTION 7.** 132.01 (6) of the statutes is amended to read:

5 132.01 (6) (a) A registration recorded or renewed under this section or s. 132.04
6 or 132.11 before May 1, 1990, is effective for 20 years. A registration may be renewed
7 on or after May 1, 1990, for 10-year periods upon application to the ~~secretary of state~~
8 department and payment of the same fee required for a registration. Application for
9 renewal shall be made within 6 months before the expiration of the 20-year
10 registration period or 10-year renewal period specified in this paragraph.

11 (b) A registration recorded under this section or s. 132.04 or 132.11 on or after
12 May 1, 1990, is effective for 10 years. A registration may be renewed for 10-year
13 periods upon application to the ~~secretary of state~~ department and payment of the
14 same fee required for a registration. Application for renewal shall be made within
15 6 months before the expiration of the 10-year period specified in this paragraph.

16 **SECTION 8.** 132.01 (7) (intro.) of the statutes is amended to read:

17 132.01 (7) (intro.) The ~~secretary of state~~ department shall do all of the
18 following:

19 **SECTION 9.** 132.01 (7) (b) of the statutes is amended to read:

20 132.01 (7) (b) Cancel from his or her register a registration of a mark under this
21 section upon the request of the registrant of the mark. The ~~secretary of state~~
22 department may not charge a fee for canceling a registration under this paragraph.

23 **SECTION 10.** 132.01 (8) of the statutes is amended to read:

24 132.01 (8) Any person, firm, partnership, corporation, association or union who
25 claims a right to the use of subject matter conflicting with any registration by another

1 may bring action against such other in the circuit court for the county in which such
2 other resides, or in the circuit court for Dane County, and in any such action the right
3 to the use and registration of such subject matter shall be determined as between the
4 parties, and registration shall be granted or withheld or canceled by the ~~secretary~~
5 ~~of state~~ department in accordance with the final judgment in any such action.
6 Nonuser for a period of at least 2 years continuing to the date of commencement of
7 any action in which abandonment is in issue shall be prima facie evidence of
8 abandonment to the extent of such nonuser.

9 **SECTION 11.** 132.01 (9) of the statutes is amended to read:

10 132.01 (9) Title to any registration hereunder shall pass to any person, firm or
11 corporation succeeding to the registrant's business to which such registration
12 pertains. Written assignments of any such registration from a registrant to such a
13 successor may be filed with and shall be recorded by the ~~secretary of state~~
14 department upon payment of the fee specified in sub. (3). When such assignment is
15 recorded, a new registration shall be entered in the name of the assignee, and on such
16 registration and any subsequent certificates or registration of an assigned
17 registration the ~~secretary of state~~ department shall show the previous ownership
18 and dates of assignment thereof.

19 **SECTION 12.** 132.031 of the statutes is amended to read:

20 **132.031 Certificate; evidence.** The ~~secretary of state~~ department shall
21 deliver to the person, corporation, association or union so filing or causing to be filed
22 any such mark, or any assignment of such subject matter previously registered, or
23 to any person, corporation, association or union renewing a registration, as many
24 duly attested certificates of the registration or renewal of the same as may be desired.
25 Any such certificate shall, in all suits and prosecutions arising out of or depending

1 upon any rights claimed under such mark, be prima facie evidence of the adoption
2 thereof and of the facts prerequisite to registrations thereof as required by s. 132.01.

3 **SECTION 13.** 132.04 (1) of the statutes is amended to read:

4 132.04 (1) Any person who is the owner of cans, tubs, firkins, boxes, bottles,
5 casks, barrels, kegs, cartons, tanks, fountains, vessels or containers with his or her
6 names, brands, designs, trademarks, devices or other marks of ownership stamped,
7 impressed, labeled, blown in or otherwise marked thereon, may file with the
8 ~~secretary of state~~ department and record with the register of deeds of any county in
9 which the person has his or her principal place of business, a written statement or
10 description verified by affidavit of the owner or his or her agent, of the names, brands,
11 designs, trademarks, devices or other marks of ownership used by him or her, and
12 of the articles upon which they are used, or if the principal place of business is outside
13 the state, then a written statement or verified description may be recorded with the
14 register of deeds of any county. The statement shall be published as a class 3 notice,
15 under ch. 985, in the county, and a copy of the publication, proved as provided in s.
16 985.12, shall also be filed with the ~~secretary of state~~ department and recorded with
17 the register of deeds.

18 **SECTION 14.** 132.04 (2) of the statutes is amended to read:

19 132.04 (2) All such written statements or descriptions and all such certificates
20 of publication so filed or recorded shall be subject at all reasonable hours to public
21 inspection. The ~~secretary of state~~ department and the register of deeds shall deliver
22 to all applicants certified copies of all such written statements or descriptions or
23 names, brands, designs, trademarks, devices, or other marks of ownership and of all
24 certificates of publication filed or recorded with them and such certified copies shall
25 be admissible in evidence in all prosecutions under ss. 132.04 to 132.08, and shall be

1 prima facie evidence that this section has been complied with, and of the title of the
2 owner named therein to the property upon which the name, brand, design,
3 trademark, device, or other marks of ownership of the owner appear as described
4 therein.

5 **SECTION 15.** 132.04 (3) of the statutes is amended to read:

6 132.04 (3) The ~~secretary of state~~ department shall receive a fee of \$15 and the
7 register of deeds shall receive the fee specified in s. 59.43 (2) (ag) or (e) for each
8 statement and certificate of publication filed or recorded and shall also receive the
9 fee specified in s. 59.43 (2) (b) for each certified copy of such statement and certificate
10 of publication, to be paid for by the person filing, recording or applying for the same.

11 **SECTION 16.** 132.04 (4) of the statutes is amended to read:

12 132.04 (4) (a) The ~~secretary of state~~ department and register of deeds shall
13 cancel a statement or description under this section upon the request of the person
14 named in the records of the ~~secretary of state~~ department or register of deeds as the
15 owner of marks of ownership described in the statement or description.

16 (b) The ~~secretary of state~~ department and register of deeds may not charge a
17 fee for canceling a statement or description under par. (a).

18 **SECTION 17.** 132.11 (1) (intro.) of the statutes is amended to read:

19 132.11 (1) (intro.) The ~~secretary of state~~ department shall do all of the
20 following:

21 **SECTION 18.** 132.11 (1) (c) of the statutes is amended to read:

22 132.11 (1) (c) Cancel the description of a name, brand or trademark recorded
23 under par. (a) upon the request of the person, firm or corporation named in the
24 records of the ~~secretary of state~~ department as the owner of the name, brand or

1 trademark. The ~~secretary of state~~ department may not charge a fee for canceling a
2 description under this paragraph.

3 **SECTION 19.** 132.16 (1m) of the statutes is amended to read:

4 132.16 (1m) Any organization may register, ~~in the office of the secretary of~~
5 ~~state, with the department~~ a facsimile, duplicate, or description of any of the
6 organization's identifying information and may, by reregistration, alter or cancel the
7 organization's identifying information.

8 **SECTION 20.** 132.16 (2) of the statutes is amended to read:

9 132.16 (2) Application for registration or reregistration under sub. (1m) shall
10 be made by the organization's chief officer or officers upon forms provided by the
11 ~~secretary of state~~ department. The registration shall be for the use, benefit, and on
12 behalf of the organization and the organization's current and future individual
13 members throughout this state.

14 **SECTION 21.** 132.16 (3) of the statutes is amended to read:

15 132.16 (3) The ~~secretary of state~~ department shall keep a properly indexed file
16 of all registrations under this section, which shall also show any alterations or
17 cancelations by reregistration.

18 **SECTION 22.** 132.16 (5) of the statutes is amended to read:

19 132.16 (5) Upon granting registration under this section, the ~~secretary of state~~
20 department shall issue ~~his or her~~ a certificate to the petitioners, setting forth the fact
21 of the registration.

22 **SECTION 23.** 132.16 (6) of the statutes is amended to read:

23 132.16 (6) The fees of the ~~secretary of state~~ department for registration or
24 reregistration under this section, searches made by the ~~secretary of state~~
25 department, and certificates issued by the ~~secretary of state~~ department under this

1 section, shall be the same as provided by law for similar services. The fees collected
2 under this section shall be paid by the ~~secretary of state~~ department into the state
3 treasury.

4 **SECTION 24.** 137.01 (1) (a) of the statutes is amended to read:

5 137.01 (1) (a) The governor shall appoint notaries public who shall be United
6 States residents and at least 18 years of age. Applicants who are not attorneys shall
7 file an application with the ~~secretary of state~~ department of financial institutions
8 and pay a \$20 fee.

9 **SECTION 25.** 137.01 (1) (b) of the statutes is amended to read:

10 137.01 (1) (b) The ~~secretary of state~~ financial institutions shall satisfy himself
11 or herself that the applicant has the equivalent of an 8th grade education, is familiar
12 with the duties and responsibilities of a notary public and, subject to ss. 111.321,
13 111.322 and 111.335, does not have an arrest or conviction record.

14 **SECTION 26.** 137.01 (1) (d) of the statutes is amended to read:

15 137.01 (1) (d) Qualified applicants shall be notified by the ~~secretary of state~~
16 department of financial institutions to take and file the official oath and execute and
17 file an official bond in the sum of \$500, with a surety executed by a surety company
18 and approved by the secretary of state financial institutions.

19 **SECTION 27.** 137.01 (1) (e) of the statutes is amended to read:

20 137.01 (1) (e) The qualified applicant shall file his or her signature, post-office
21 address and an impression of his or her official seal, or imprint of his or her official
22 rubber stamp with the ~~secretary of state~~ department of financial institutions.

23 **SECTION 28.** 137.01 (1) (g) of the statutes is amended to read:

1 137.01 (1) (g) At least 30 days before the expiration of a commission the
2 ~~secretary of state~~ department of financial institutions shall mail notice of the
3 expiration date to the holder of a commission.

4 **SECTION 29.** 137.01 (2) (a) of the statutes is amended to read:

5 137.01 (2) (a) Except as provided in par. (am), any United States resident who
6 is licensed to practice law in this state is entitled to a permanent commission as a
7 notary public upon application to the ~~secretary of state~~ department of financial
8 institutions and payment of a \$50 fee. The application shall include a certificate of
9 good standing from the supreme court, the signature and post-office address of the
10 applicant and an impression of the applicant's official seal, or imprint of the
11 applicant's official rubber stamp.

12 **SECTION 30.** 137.01 (2) (am) of the statutes is amended to read:

13 137.01 (2) (am) If a United States resident has his or her license to practice law
14 in this state suspended or revoked, upon reinstatement of his or her license to
15 practice law in this state, the person may be entitled to receive a certificate of
16 appointment as a notary public for a term of 4 years. An eligible notary appointed
17 under this paragraph is entitled to reappointment for 4-year increments. At least
18 30 days before the expiration of a commission under this paragraph the ~~secretary of~~
19 ~~state~~ department of financial institutions shall mail notice of the expiration date to
20 the holder of the commission.

21 **SECTION 31.** 137.01 (2) (b) of the statutes is amended to read:

22 137.01 (2) (b) The secretary of ~~state~~ financial institutions shall issue a
23 certificate of appointment as a notary public to persons who qualify under the
24 requirements of this subsection. The certificate shall state that the notary
25 commission is permanent or is for 4 years.

1 **SECTION 32.** 137.01 (2) (c) of the statutes is amended to read:

2 137.01 **(2)** (c) The supreme court shall file with the ~~secretary of state~~
3 department of financial institutions notice of the surrender, suspension or revocation
4 of the license to practice law of any attorney who holds a permanent commission as
5 a notary public. Such notice shall be deemed a revocation of said commission.

6 **SECTION 33.** 137.01 (6) (a) of the statutes is amended to read:

7 137.01 **(6)** (a) The secretary of state financial institutions may certify to the
8 official qualifications of any notary public and to the genuineness of the notary
9 public's signature and seal or rubber stamp.

10 **SECTION 34.** 137.01 (6m) of the statutes is amended to read:

11 137.01 **(6m)** CHANGE OF RESIDENCE. A notary public does not vacate his or her
12 office by reason of his or her change of residence within the United States. Written
13 notice of any change of address shall be given to the ~~secretary of state~~ department
14 of financial institutions within 10 days of the change.

15 **SECTION 35.** 137.01 (7) of the statutes is amended to read:

16 137.01 **(7)** OFFICIAL RECORDS TO BE FILED. When any notary public ceases to hold
17 office, the notary public, or in case of the notary public's death the notary public's
18 personal representative, shall deposit the notary public's official records and papers
19 ~~in the office of the secretary of state~~ with the department of financial institutions.
20 If the notary or personal representative, after the records and papers come to his or
21 her hands, neglects for 3 months to deposit them, he or she shall forfeit not less than
22 \$50 nor more than \$500. If any person knowingly destroys, defaces, or conceals any
23 records or papers of any notary public, the person shall forfeit not less than \$50 nor
24 more than \$500, and shall be liable for all damages resulting to the party injured.

1 The ~~secretary of state~~ department of financial institutions shall receive and safely
2 keep all such papers and records.

3 **SECTION 9142. Nonstatutory provisions; Secretary of State.**

4 (1) TRANSFER OF TRADEMARK AND NOTARY FUNCTIONS TO THE DEPARTMENT OF
5 FINANCIAL INSTITUTIONS; TRANSITIONAL PROVISIONS.

6 (a) *Definitions.* In this subsection:

7 1. "Department" means the department of financial institutions.

8 2. "Office" means the office of the secretary of state.

9 3. "Relating to the office's trademark or notary functions" means relating to the
10 office's functions and duties under section 137.01, 2009 stats., or chapter 132, 2009
11 stats.

12 (b) *Assets and liabilities.* On the effective date of this paragraph, the assets and
13 liabilities of the office relating to the office's trademark or notary functions shall
14 become the assets and liabilities of the department.

15 (c) *Staff.*

16 1. On the effective date of this subdivision, 1.0 FTE PR position relating to the
17 office's trademark or notary functions and the incumbent employee, identified by the
18 secretary of administration, holding that position in the office are transferred to the
19 department.

20 2. The employee transferred under subdivision 1. to the division has all of the
21 rights and the same status under subchapter V of chapter 111 and chapter 230 of the
22 statutes in the division that he or she enjoyed in the office immediately before the
23 transfer. Notwithstanding section 230.28 (4) of the statutes, the employee so
24 transferred who has attained permanent status in class is not required to serve a
25 probationary period.

1 3. On the effective date of this subdivision, the remaining 1.0 FTE PR position
2 of the office relating to the office's trademark or notary functions not transferred
3 under subdivision 1. is deauthorized.

4 (d) *Tangible personal property.* On the effective date of this paragraph, all
5 tangible personal property, including records, of the office relating to the office's
6 trademark or notary functions is transferred to the department.

7 (e) *Contracts.* All contracts entered into by the office, in effect on the effective
8 date of this paragraph, relating to the office's trademark or notary functions remain
9 in effect and are transferred to the department. The department shall carry out any
10 obligations under such a contract until the contract is modified or rescinded by the
11 department to the extent allowed under the contract.

12 (f) *Rules and orders.*

13 1. All rules promulgated by the office relating to the office's trademark or
14 notary functions that are in effect on the effective date of this subdivision remain in
15 effect until their specified expiration dates or until amended or repealed by the
16 department.

17 2. All orders issued by the office relating to the office's trademark or notary
18 functions that are in effect on the effective date of this subdivision remain in effect
19 until their specified expiration dates or until modified or rescinded by the
20 department.

21 (g) *Pending matters.* Any matter relating to the office's trademark or notary
22 functions pending with the office on the effective date of this paragraph is
23 transferred to the department, and all materials submitted to or actions taken by the
24 office with respect to the pending matter are considered as having been submitted
25 to or taken by the department.

(h) *Department of administration to arbitrate disputes.* In the case of disagreement between the secretary of financial institutions and the secretary of state with respect to any matter specified in paragraph (c), (d), (e), (f), or (g), the department of administration shall determine the matter and shall develop a plan for an orderly transfer.

SECTION 9442. Effective dates; Secretary of State.

(1) TRANSFER OF TRADEMARK AND NOTARY FUNCTIONS TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS. The treatment of sections 20.575 (1) (g), 100.14 (2), 132.001 (1m), 132.01 (1), (3), (5), (6), (7) (intro.) and (b), (8), and (9), 132.031, 132.04 (1), (2), (3), and (4), 132.11 (1) (intro.) and (c), 132.16 (1m), (2), (3), (5), and (6), and 137.01 (1) (a), (b), (d), (e), and (g), (2) (a), (am), (b), and (c), (6) (a), (6m), and (7) of the statutes and SECTION 9142 (1) of this act take effect on October 1, 2011, or on the day after publication, whichever is later.

(END)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0721/5ins
ARG:.....

1 **insert anal:**

Under current law, \$200,000 is transferred annually from a DFI appropriation for general program operations to an appropriation of the Office of the SOS for general program operations. This bill increases the amount of the transfer to \$325,000 annually.

2 **insert 2-1:**

3 **SECTION ~~1~~** 20.144 (1) (g) of the statutes is amended to read:

4 20.144 (1) (g) *General program operations.* The amounts in the schedule for
5 the general program operations of the department of financial institutions. Except
6 as provided in pars. (a), (h), (i), (j), and (u), all moneys received by the department,
7 other than by the office of credit unions and the division of banking, and 88% of all
8 moneys received by the department's division of banking shall be credited to this
9 appropriation, but any balance at the close of a fiscal year under this appropriation
10 shall lapse to the general fund. Annually, \$200,000 [✓]\$325,000 of the amounts received
11 under this appropriation account shall be transferred to the appropriation account
12 under s. 20.575 (1) (g).

History: 1995 a. 27 ss. 492, 495, 498, 499, 501, 504, 518, 519, 520b, 536c; 1995 a. 216; 1999 a. 9; 2003 a. 33; 2007 a. 196; 2009 a. 405.

Gary, Aaron

From: Gary, Aaron
Sent: Friday, February 11, 2011 2:09 PM
To: Waterman, Mickie D - DOA
Cc: Grinde, Kirsten - DOA
Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI
OK, I'll take out the delayed eff. date entirely. Aaron

From: Waterman, Mickie D - DOA [mailto:Mickie.Waterman@wisconsin.gov]
Sent: Friday, February 11, 2011 2:04 PM
To: Gary, Aaron
Cc: Grinde, Kirsten - DOA
Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Hi Aaron,

We don't want ANY part of this to have a delayed effective date. The fee transfer, the functions and the position transfer should all happen 7/1/11. Sorry for the confusion!

Thanks,
Mickie

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Friday, February 11, 2011 1:43 PM
To: Waterman, Mickie D - DOA
Cc: Grinde, Kirsten - DOA
Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Hi Mickie,

I omitted 20.144 (1) (g) from the delayed eff. date in this draft. That means the provision is governed by the budget bill's general eff. date of 7/1/11. So the draft should be OK. Aaron

From: Waterman, Mickie D - DOA [mailto:Mickie.Waterman@wisconsin.gov]
Sent: Friday, February 11, 2011 1:01 PM
To: Gary, Aaron
Cc: Grinde, Kirsten - DOA
Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Hi Aaron,

It appears the effective date still needs to be changed to 7/1/11.

Thanks,
Mickie

From: Waterman, Mickie D - DOA

2/11/2011

Sent: Wednesday, February 09, 2011 1:19 PM

To: Gary, Aaron - LEGIS

Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Hi Aaron,

Yes. Thanks for checking!

Mickie

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]

Sent: Wednesday, February 09, 2011 1:12 PM

To: Waterman, Mickie D - DOA

Subject: RE: Transfer notary and trademark functions from Secretary of State to DFI

Mickie,

Do you want this change to take effect with the new fiscal biennium (7/1/11), instead of the delayed eff. date of the rest of this draft? Thanks. Aaron

Aaron R. Gary

Attorney, Legislative Reference Bureau

608.261.6926 (voice)

608.264.6948 (fax)

aaron.gary@legis.state.wi.us

From: Waterman, Mickie D - DOA [mailto:Mickie.Waterman@wisconsin.gov]

Sent: Wednesday, February 09, 2011 11:22 AM

To: Gary, Aaron

Subject: FW: Transfer notary and trademark functions from Secretary of State to DFI

Hi Aaron,

Please add to this draft that we will be increasing the transfer from DFI to SOS from \$200,000 to \$325,000 each year.

Thanks,
Mickie

From: DOADLBASADMININTERNETSHAREPOINT@WI.GOV
[mailto:DOADLBASADMININTERNETSHAREPOINT@WI.GOV]

Sent: Monday, January 31, 2011 9:11 AM

To: Waterman, Mickie D - DOA

Cc: Thornton, Scott - DOA; Grinde, Kirsten - DOA

Subject: Transfer notary and trademark functions from Secretary of State to DFI

We have received an LRB draft for DOA Tracking Code: BB0145

LRB Draft Number: 0721/4

2/11/2011